IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESSDAY, THE SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE D.S.R.VARMA**

**WRIT PETITION NO : 6748 of 2005**

Between:

B.R.Manik Rao, s/o Sayeb Ram,
Kaldurki Vg.Bodhan Mandal, Nizamabad District.

**..... PETITIONER**

AND

1 The Revenue Divisional Officer, Bodhan, Nizamabad District.
2 The Mandal Revenue Officer, Bodhan Mandal, Bodhan, Nizamabad District.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more in the nature of writ of CERTIORARI call for the records relating to the order vide No.E2/6775/2004, dt.31-12-2004 passed by the first respondent and QUASH the same by duly declaring the order passed by the first respondent without looking into the relevant records, without recording any valid reasons and without causing any enquiry is nothing but arbitrary, illegal and contrary to Clause 5(iv) of A.P. State Public Distribution System (Control) Order, 2001 and also contrary to the well settled principles of law laid down while adjudicating the cases arising under E.C.Act and pass such other order or orders as this Hon'ble Court may deem fit and proper.

**Counsel for the Petitioner: MR.V.RAVI KIRAN RAO**

**Counsel for the Respondents: GP FOR CIVIL SUPPLIES**

**The Court at the stage of admission made the following :**

***ORAL ORDER***:

Heard both sides. Perused the material placed before me.

Petitioner is an authorized fair price shop dealer. On a report given by the second respondent, the first respondent, by the impugned order, kept his authorization under suspension. The relevant portion in the impugned is extracted hereunder:

> "In view of the above Sri B.R. Manik Rao, FPS dealer Kaldurki has committed irregularities in dealing the F.P. shop contravening the provision Cl.22(iv), (v), (vi) of A.P. Control PDS (Control) Order, 2001, pending disposal of case, the authorization of Sri B.R. Manik Rao, FPS dealerj of Kaldurki vg. is hereby suspended with immediate effect".

In normal course, as and when the authorization is kept under suspension, pending enquiry, an appeal would lie with the appellate authority. However, pendency of the appeal does not preclude the appointing authority from proceeding with the enquiry unless specific orders are issued by the appellate authority not proceed with the enquiry.

The most important thing to be noticed from the impugned order is as to whether the impugned order is passed as a measure of punishment or suspension of the authorization simplicitor pending enquiry. The nature of the suspension depends much upon the language employed in the impugned order. In other words, the intention of the appointing authority in ordering suspension pending enquiry can be deciphered from the very text of the impugned order itself. In this regard, it is to be seen from the impugned order that the first respondent jumped directly to a conclusion basing on the report of the second respondent that the petitioner had committed irregularities.

Therefore, in my considered view, this conclusion that the petitioner committed irregularities even before an enquiry being conducted is punitive in nature,

which is not permissible. To put it in a different way, the first respondent, with a predetermined notion that the petitioner committed irregularities, passed the impugned order and therefore, the impugned order is to be treated as a substantive punishment only and it is needless to say that in such cases, a show-cause notice has to be issued.

Similar view had been taken by a learned judge of this Court in *ALIVELAMMA* v s . *REVENUE DIVISIONAL OFFICER*, *DHARMAVARAM, ANANTHAPUR DISTRICT*. The relevant portion of the said order, which is at para 6 is extracted hereunder:

> *".....The question as to whether the suspension is resorted to, as a measure, pending enquiry, or as a substantive punishment, would depend on the text of the order passed in the relevant case....."*

For the foregoing reasons, and following the view taken by the learned judge of this Court in the case cited supra, the impugned order is set aside. However, the first respondent is at liberty to record independent reasons and pass appropriate orders afresh, after being satisfied with the reasons so recorded.

Accordingly, the writ petition is allowed, at the stage of admission. No costs.

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kvsn 06-04-2005

To

1 The Revenue Divisional Officer, Bodhan, Nizamabad District.

2 The Mandal Revenue Officer, Bodhan Mandal, Bodhan, Nizamabad District.

3 Two CCs to GP for Civil Supplies, High Court buildings, Hyderabad.

4 Two CD copies.